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EXAMINER

ZERVIGON, RUDY

ART UNIT	PAPER NUMBER
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1763

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

CM

Office Action Summary

Application No.

10/658,988

Applicant(s)

DAWS ET AL.

Examiner

Rudy Zervigon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “passageway”, “upper hole”, and “lower hole”, must be shown or the feature canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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3. Claims 25-27, 38, and 41 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant's specification does not sufficiently detail Applicant's claimed "passageway".

4. Claims 27, 41 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant's specification does not sufficiently detail Applicant's claimed "upper hole", "lower hole", .

5. Claims 32, 33, 36, 37, 39, 42, and 44 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant's specification cites "base plate", "floor plate", "support plate", "center plate", ... as such the claimed "plate" in claims 32, 33, 36, 37, 39, 42, and 44 is undertermined.

Claim Rejections - 35 USC § 102

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 24, 25, 28-35, 36-39, 43, and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Christin et al. (US 5,904,957 A). Christin teaches a furnace (19, 11a,b; Figure 2) for densifying a number of porous structures (12; Figure 2; column 5, lines 61-67) stacked

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adjacent each other in a stack (30; Figure 2; column 6, lines 49-58), wherein the stack (30; Figure 2; column 6, lines 49-58) comprises a center opening region (31; Figure 2) and an outer region (36; Figure 2), the furnace (19, 11a,b; Figure 2) comprising an inlet duct (16; Figure 2) and an outlet duct (17; Figure 2); and an inlet opening (holes of lowest 15, not labelled; Figure 2) adjacent one end of said center opening region (31; Figure 2) and in communication therewith, a size of said inlet opening (holes of lowest 15, not labelled; Figure 2) controlling gas flow to said center opening region (31; Figure 2) wherein a predetermined first portion of said gas passes through said inlet opening (holes of lowest 15, not labelled; Figure 2) to said center opening region (31; Figure 2) and a remaining second portion passes to said outer region (36; Figure 2), as claimed by claim 24 – Applicant’s claim requirement of “first portion” and “second portion” of the process gas are claim requirements of intended use of the pending apparatus claims.

Further, it has been held that claim language that simply specifies an intended use or field of use for the invention generally will not limit the scope of a claim (Walter , 618 F.2d at 769, 205 USPQ at 409; MPEP 2106). Additionally, in apparatus claims, intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim (In re Casey, 152 USPQ 235 (CCPA 1967); In re Otto , 136 USPQ 458, 459 (CCPA 1963); MPEP 2111.02).

Christin further teaches:

- i. The furnace (19, 11a,b; Figure 2) according to claim 24, further comprising a hole (holes of lowest 15, not labelled; Figure 2) receiving said gas from said inlet duct (16; Figure 2) and a passageway (volume 34, 36; Figure 2) extending from said hole (holes of lowest 15, not

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labelled; Figure 2) to said outer region (36; Figure 2), said second portion passing through said passageway (volume 34, 36; Figure 2) to said outer region (36; Figure 2), as claimed by claim 25

ii. The furnace (19, 11a,b; Figure 2) according to claim 24, further comprising a spacer (23; Figure 2) disposed between a floor plate (11a; Figure 2) of the furnace (19, 11a,b; Figure 2) and a base plate (15a; Figure 2) supporting the stack (30; Figure 2; column 6, lines 49-58) thereby forming an open space (volume within 23; Figure 2) therebetween, said open space (volume within 23; Figure 2) receiving said gas from said inlet duct (16; Figure 2), wherein said inlet opening (holes of lowest 15, not labelled; Figure 2) extends through said base plate (15a; Figure 2) thereby being in communication with said open space (volume within 23; Figure 2), and wherein said open space (volume within 23; Figure 2) is in communication with said outer region (36; Figure 2), as claimed by claim 28

iii. The furnace (19, 11a,b; Figure 2) according to claim 24, wherein said first portion is between about 60% to 80% of said gas and said second portion is between about 40% to 20% of said gas – claim 29 – Applicant’s “first portion” and “second portion” is not structural recitation. See above.

iv. The furnace (19, 11a,b; Figure 2) according to claim 24, wherein said first portion is between about 15% to 35% of said gas and said second portion is between about 85% to 65% of said gas – claim 30 – Applicant’s “first portion” and “second portion” is not structural recitation. See above.

v. The furnace (19, 11a,b; Figure 2) according to claim 24, further comprising spacers (33; Figure 2) disposed between adjacent porous structures (12; Figure 2; column 5, lines 61-67) in

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the stack (30; Figure 2; column 6, lines 49-58) thereby forming open passages (34; column 6, lines 58-67) therebetween, wherein some of one of said first and second portions of said gas passes between said center opening region (31; Figure 2) and said outer region (36; Figure 2) through said open passages, as claimed by claim 31. Applicant's claim requirement of "first and second portions of said gas" is a claim requirement of intended use of the pending apparatus claims. Further, it has been held that claim language that simply specifies an intended use or field of use for the invention generally will not limit the scope of a claim (Walter , 618 F.2d at 769, 205 USPQ at 409; MPEP 2106). Additionally, in apparatus claims, intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim (In re Casey, 152 USPQ 235 (CCPA 1967); In re Otto , 136 USPQ 458, 459 (CCPA 1963); MPEP 2111.02).

vi. The furnace (19, 11a,b; Figure 2) according to claim 24, further comprising a plate (26; Figure 2) disposed away from one of the porous structures (12; Figure 2; column 5, lines 61-67) at one end of the stack (30; Figure 2; column 6, lines 49-58) thereby blocking a portion of said first portion of gas from passing out of said center opening region (31; Figure 2) at said end and thereby forming an open passage (holes in 26, not labelled; Figure 2) therebetween wherein some of said gas passes between said center opening region (31; Figure 2) and said outer region (36; Figure 2) through said open passage (holes in 26, not labelled; Figure 2), as claimed by claim 32

vii. The furnace (19, 11a,b; Figure 2) according to claim 24, further comprising a plate (26; Figure 2) disposed at one end of the stack (30; Figure 2; column 6, lines 49-58) of porous

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structures (12; Figure 2; column 5, lines 61-67) thereby blocking most of said first portion of gas from passing out of said center opening region (31; Figure 2) at said end, said plate (26; Figure 2) comprising at least one hole (not labelled; Figure 2) adjacent said center opening region (31; Figure 2) and extending therethrough, wherein at least some of said gas passes out of said center opening region (31; Figure 2) at said end through said hole (not labelled; Figure 2), as claimed by claim 33

viii. The furnace (19, 11a,b; Figure 2) according to claim 24, further comprising a cap (26; Figure 2) disposed at one end of the stack (30; Figure 2; column 6, lines 49-58) of porous structures (12; Figure 2; column 5, lines 61-67) and extending partially into said center opening region (31; Figure 2) thereby blocking most of said first portion of gas from passing out of said center opening region (31; Figure 2) at said end, said cap (26; Figure 2) comprising at least one longitudinal hole (not labelled; Figure 2), wherein at least some of said gas passes out of said center opening region (31; Figure 2) at said end through said longitudinal hole (not labelled; Figure 2), as claimed by claim 34

ix. The furnace (19, 11a,b; Figure 2) according to claim 24, further comprising a plate (26; Figure 2) disposed at one end of the stack (30; Figure 2; column 6, lines 49-58), wherein said plate (26; Figure 2) comprises an exit hole (not labelled; Figure 2) adjacent said center opening region (31; Figure 2), said plate (26; Figure 2) blocking said outer region (36; Figure 2) whereby substantially all of said second portion of gas passes through one or more of said exit holes (not labelled; Figure 2), as claimed by claim 36

x. The furnace (19, 11a,b; Figure 2) according to claim 24, further comprising a hole (holes of lowest 15, not labelled; Figure 2) receiving said gas from said inlet duct (16; Figure 2) and a

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passageway (volume 34, 36; Figure 2) extending from said hole (holes of lowest 15, not labelled; Figure 2) to said outer region (36; Figure 2), said second portion passing through said passageway (volume 34, 36; Figure 2) to said outer region (36; Figure 2); and a distributor (25; Figure 2), wherein said hole (holes of lowest 15, not labelled; Figure 2) and said passageway (volume 34, 36; Figure 2) extend through said distributor (25; Figure 2), said hole (holes of lowest 15, not labelled; Figure 2) being in communication with said inlet opening (holes of lowest 15, not labelled; Figure 2), wherein said distributor (25; Figure 2) is disposed between a floor plate (11a; Figure 2) of the furnace (19, 11a,b; Figure 2) and a base plate (15a; Figure 2) supporting the stack (30; Figure 2; column 6, lines 49-58), and wherein said passageway (volume 34, 36; Figure 2) passes said second portion to a space between said floor plate (11a; Figure 2) and said base plate (15a; Figure 2); wherein said first portion is between about 60% to 80% of said gas and said second portion is between about 40% to 20% of said gas (“first portion”, “second portion”; see above); and further comprising spacers (33; Figure 2) disposed between adjacent porous structures (12; Figure 2; column 5, lines 61-67) in the stack (30; Figure 2; column 6, lines 49-58) thereby forming open passages (34; column 6, lines 58-67) therebetween, wherein some of said gas passes from said center opening region (31; Figure 2) to said outer region (36; Figure 2) through said open passages – claim 38

xi. The furnace (19, 11a,b; Figure 2) according to claim 38, further comprising a plate (26; Figure 2) disposed away from one of the porous structures (12; Figure 2; column 5, lines 61-67) at one end of the stack (30; Figure 2; column 6, lines 49-58) thereby blocking a portion of said first portion of gas from passing out of said center opening region (31; Figure 2) at said end and thereby forming an open passage (holes in 26, not labelled; Figure 2) therebetween wherein

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some of said first portion of gas passes from said center opening region (31; Figure 2) to said outer region (36; Figure 2) through said open passage (holes in 26, not labelled; Figure 2), as claimed by claim 39

xii. The furnace (19, 11a,b; Figure 2) according to claim 24, further comprising a spacer (23; Figure 2) disposed between a floor plate (11a; Figure 2) of the furnace (19, 11a,b; Figure 2) and a base plate (15a; Figure 2) supporting the stack (30; Figure 2; column 6, lines 49-58) thereby forming an open space (volume within 23; Figure 2) therebetween, said open space (volume within 23; Figure 2) receiving said gas from said inlet duct (16; Figure 2), wherein said inlet opening (holes of lowest 15, not labelled; Figure 2) extends through said base plate (15a; Figure 2) thereby being in communication with said open space (volume within 23; Figure 2), and wherein said open space (volume within 23; Figure 2) is in communication with said outer region (36; Figure 2); wherein said first portion is between about 15% to 35% of said gas and said second portion is between about 85% to 65% of said gas; and further comprising spacers (33; Figure 2) disposed between adjacent porous structures (12; Figure 2; column 5, lines 61-67) in the stack (30; Figure 2; column 6, lines 49-58) thereby forming open passages (holes in 26, not labelled; Figure 2) therebetween, wherein some of said second portion of gas passes from said outer region (36; Figure 2) to said center opening region (31; Figure 2) through said open passages (holes in 26, not labelled; Figure 2), as claimed by claim 43

xiii. The furnace (19, 11a,b; Figure 2) according to claim 43, further comprising a plate (26; Figure 2) disposed at one end of the stack (30; Figure 2; column 6, lines 49-58), wherein said plate (26; Figure 2) comprises an exit hole (not labelled; Figure 2) adjacent said center opening region (31; Figure 2), said plate (26; Figure 2) blocking said outer region (36; Figure 2) whereby

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substantially all of said second portion of gas passes through one or more of said exit holes (not labelled; Figure 2); wherein said plate (26; Figure 2) is disposed away from one of the porous structures (12; Figure 2; column 5, lines 61-67) at said end of the stack (30; Figure 2; column 6, lines 49-58) thereby forming an open passage (holes in 26, not labelled; Figure 2) therebetween wherein some of said second portion of gas passes from said outer region (36; Figure 2) to said center opening region (31; Figure 2) through said open passage (holes in 26, not labelled; Figure 2), as claimed by claim 44

Claim Rejections - 35 USC § 103

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claim 37, 41, 42, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christin et al. (US 5,904,957 A). Christin is discussed above. Christin further teaches:

i. The furnace (19, 11a,b; Figure 2) according to claim 24, further comprising a plate (26; Figure 2) disposed at one end of the stack (30; Figure 2; column 6, lines 49-58), wherein said plate (26; Figure 2) comprises an exit hole (not labelled; Figure 2) adjacent said center opening region (31; Figure 2) – claim 37

ii. The furnace (19, 11a,b; Figure 2) according to claim 41, further comprising a plate (26; Figure 2) disposed away from one of the porous structures (12; Figure 2; column 5, lines 61-67) at one end of the stack (30; Figure 2; column 6, lines 49-58) thereby blocking most of said first portion of gas from passing out of said center opening region (31; Figure 2) at said end and thereby forming an open passage (holes in 26, not labelled; Figure 2) therebetween wherein some of said gas passes from said center opening region (31; Figure 2) to said outer region (36;

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Figure 2) through said open passage (holes in 26, not labelled; Figure 2); said plate (26; Figure 2) comprising at least one hole (not labelled; Figure 2) adjacent said center opening region (31; Figure 2) and extending therethrough, wherein at least some of said gas passes out of said center opening region (31; Figure 2) at said end through said hole (holes of lowest 15, not labelled; Figure 2) – as claimed by claim 42

Christin does not teach:

- i. a smaller hole away from said exit hole (not labelled; Figure 2), said plate (26; Figure 2) blocking said outer region (36; Figure 2) whereby most of said second portion of gas passes through one or more of said exit holes (not labelled; Figure 2) and at least some of said second portion passes through one or more of said smaller holes (11a/16 interface; Figure 2) – claim 37
- ii. The furnace (19, 11a,b; Figure 2) according to claim 24, further comprising a hole (holes of lowest 15, not labelled; Figure 2) receiving said gas from said inlet duct (16; Figure 2) and a passageway (volume 34, 36; Figure 2) extending from said hole (holes of lowest 15, not labelled; Figure 2) to said outer region (36; Figure 2), said second portion passing through said passageway (volume 34, 36; Figure 2) to said outer region (36; Figure 2); and a base plate (15a; Figure 2) supporting the stack (30; Figure 2; column 6, lines 49-58), wherein said inlet opening (holes of lowest 15, not labelled; Figure 2) extends through said base plate (15a; Figure 2), said inlet opening (holes of lowest 15, not labelled; Figure 2) comprising said hole (holes of lowest 15, not labelled; Figure 2) and a smaller, upper hole is a larger, lower hole, wherein said passageway (volume 34, 36; Figure 2) extends through said base plate (15a; Figure 2) to an outer edge of said base plate (15a; Figure 2); wherein said first portion is between about 60% to 80% of said gas and said second portion is between about 40% to 20% of said gas; and further

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comprising spacers (33; Figure 2) disposed between adjacent porous structures (12; Figure 2; column 5, lines 61-67) in the stack (30; Figure 2; column 6, lines 49-58) thereby forming open passages (holes in 26, not labelled; Figure 2) therebetween, wherein some of said first portion of gas passes from said center opening region (31; Figure 2) to said outer region (36; Figure 2) through said open passages (holes in 26, not labelled; Figure 2), as claimed by claim 41

iii. The furnace (19, 11a,b; Figure 2) according to claim 43, further comprising a plate (26; Figure 2) disposed at one end of the stack (30; Figure 2; column 6, lines 49-58), wherein said plate (26; Figure 2) comprises an exit hole (not labelled; Figure 2) adjacent said center opening region (31; Figure 2) and a smaller hole away from said exit hole (not labelled; Figure 2), said plate (26; Figure 2) blocking said outer region (36; Figure 2) whereby most of said second portion of gas passes through one or more of said exit holes (not labelled; Figure 2) and at least some of said second portion passes through one or more of said smaller holes (11a/16 interface; Figure 2); wherein said plate (26; Figure 2) is disposed away from one of the porous structures (12; Figure 2; column 5, lines 61-67) at said end of the stack (30; Figure 2; column 6, lines 49-58) thereby forming an open passage (holes in 26, not labelled; Figure 2) therebetween wherein some of said second portion of gas passes from said outer region (36; Figure 2) to said center opening region (31; Figure 2) through said open passage (holes in 26, not labelled; Figure 2), as claimed by claim 45

It would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the relative size of Christin's hole dimensions to "smaller" or "larger" holes.

Motivation to optimize the relative size of Christin's hole dimensions to "smaller" or "larger" holes is for controlling flow characteristics of Christin's apparatus as taught by Christin (column

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1; lines 28-40). It is well established that changes in apparatus dimensions are within the level of ordinary skill in the art.(Gardner v. TEC Systems, Inc. , 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied , 469 U.S. 830, 225 USPQ 232 (1984); In re Rose , 220 F.2d 459, 105 USPQ 237 (CCPA 1955); In re Rinehart, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976); See MPEP 2144.04)

10. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Christin et al. (US 5,904,957 A) in view of Porter; Cole D. et al. (US 5,626,680 A). Christin is discussed above. Christin does not teach the furnace (19, 11a,b; Figure 2) according to claim 34, further comprising a thermocouple wire installed through said longitudinal hole (not labelled; Figure 2) and extending through said center opening region (31; Figure 2), said thermocouple wire being connected to a thermocouple embedded in a sample porous structure, as claimed by claim 35

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add Porter's thermocouple embedded wafer to Christin's apparatus.

Motivation to add Porter's thermocouple embedded wafer is for determining the "maximum acceptable stress limit to which a wafer can be exposed" as taught by Porter (column 6, lines 40-48)

11. Claim 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christin et al. (US 5,904,957 A) in view of Liu; Jingbao et al. (US 6,403,491 B1) and Porter; Cole D. et al. (US 5,626,680 A). Christin is discussed above. Christin does not teach:

- i. The furnace (19, 11a,b; Figure 2) according to claim 39, further comprising a cap disposed at one end of the stack (30; Figure 2; column 6, lines 49-58) of porous structures (12; Figure 2; column 5, lines 61-67) and extending partially into said center opening region (31; Figure 2)

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thereby blocking most of said first portion of gas from passing out of said center opening region (31; Figure 2) at said end, said cap comprising at least one longitudinal hole (not labelled; Figure 2), wherein at least some of said gas passes out of said center opening region (31; Figure 2) at said end through said longitudinal hole (not labelled; Figure 2); and a thermocouple wire installed through said longitudinal hole (not labelled; Figure 2) and extending through said center opening region (31; Figure 2), said thermocouple wire being connected to a thermocouple embedded in a sample porous structure, as claimed by claim 40

Liu teaches a cap (350a; Figure 4) for controlling gas flow in Liu's apparatus.

Porter teaches a thermocouple (96, 98; Figure 11; column 6, lines 24-30) embedded wafer (94; Figure 11).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add Liu's cap and Porter's thermocouple embedded wafer to Christin's apparatus.

Motivation to add Liu's cap is to facilitate process gas distribution as taught by Liu (column 14; lines 22-34). Motivation to add Porter's thermocouple embedded wafer is for determining the "maximum acceptable stress limit to which a wafer can be exposed" as taught by Porter (column 6, lines 40-48)

12. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Christin et al. (US 5,904,957 A) in view of Murugesh; Laxman et al. (US 6,450,117 B1). Christin is discussed above. Christin does not teach Christin's distributor (25; Figure 2) having a radial hole passageway. Murugesh teaches a similar reactor (30; Figure 3) with a gas distributor (65; column 3; lines 41-55).

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace Christin's distributor (25; Figure 2) with Murugesh's distributor (65; column 3; lines 41-55).

Motivation to replace Christin's distributor (25; Figure 2) with Murugesh's distributor (65; column 3; lines 41-55) is for controlling the location of process gas injection within reactors as taught by Murugesh (column 7, line 65 – column 8, line 7).

Response to Arguments

13. Applicant's arguments filed February 2, 2006 have been fully considered but they are not persuasive.

14. Applicant states that the Examiner's drawing objections are in error. The Examiner disagrees. Applicant's specification is in error: Element "30" is described as "radial holes" not as the claimed "passageway". Element "80" is described as "smaller diameter hole" not as the claimed "upper hole". Element "86" is described as "larger diameter hole" not as the claimed "lower hole". Rejections under 112, 1st paragraph concerning the above-described elements are maintained for the reasons discussed above.

15. Applicant believes Applicant's claim requirement of "first portion" and "second portion" of the process gas are claim requirements which impart structural limitations in the pending apparatus claims. Applicant is mistaken. The Examiner's MPEP citations support the broad concept of intended use in apparatus claims. Gas identities such as "first portion" and "second portion" of the process gas do not impart positive structural limitations in apparatus claims. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed

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invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

16. With respect to the Examiner's applied prior art, Applicant states "Applicant's claims require an inlet opening that is sized to control gas flow, with gas passing both to the center opening and the outer region". In response, the Examiner has identified Christin's inlet opening (holes of lowest 15, not labelled; Figure 2) as meeting Applicant's claim requirement. Further, It is noted that Christin's inlet opening, and likely any hole in a similar configuration can "control gas flow, with gas passing both to the center opening and the outer region". The very presence of a "hole" is in itself a means to "control gas flow" such that gas behaves as described: "gas passing both to the center opening and the outer region".

Conclusion

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Proff. Lewis
4/14/6